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U.S. Citizenship and Immigration Services

B5

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAR 30 2006

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a contracted international broadcast journalist for Voice of America (VOA), a federal government agency that broadcasts news stories worldwide. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies for the classification sought (although we shall address this issue later in this decision). The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services (CIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Counsel describes the petitioner's past work, and argues that the petitioner's expertise qualifies her for the waiver:

> Since April 1999, [the petitioner] has had extensive experience working for several news agencies. From April 1999 to the present, [the petitioner] has served as a freelance writer for [redacted] (United Morning Daily), the most prestigious Chinese newspaper in Singapore and Southeast Asia. From April 2000 to the present, [the petitioner] has been the sole consultant for news programs News Scan and Regional Shortwaves of Radio Singapore International (RSI). From October 2002 to August 2003, [the petitioner] was a contract International Broadcaster at the Mandarin Service, Chinese Branch, Voice of America (VOA).

The intrinsic merit and national scope of VOA journalism are not in dispute. As counsel observes, Congress chartered VOA as "a consistently reliable and authoritative source of news" that "will present the policies of the United States clearly and effectively." The issue in contention regards the third prong of the national interest test set forth in *Matter of New York State Dept. of Transportation*; specifically, whether it is in the national interest to ensure that this particular alien, rather than a different qualified worker, fills the position at VOA. The petitioner does not qualify for a waiver simply by virtue of being a VOA reporter. Eligibility is not established solely by a showing that the beneficiary's field of endeavor has intrinsic merit. A petitioner cannot establish qualification for a national interest waiver based solely on the importance of the alien's occupation. It is the position of CIS to grant national interest waivers on a case by case basis, rather than to establish blanket waivers for entire fields of specialization. *Id.* at 217.

Counsel asserts that the petitioner stands apart from her colleagues because she

> has established her reputation as an expert in the issues of American politics, economy & business, technology, and society & culture. . . . She uses simple language to communicate with audiences, and guides them to look closer at the latest developments in America, to better understand the role that America plays on the international central stage. . . .
>
> [The petitioner's] unique qualification is based on her familiarity with Chinese social, political and cultural nuances from being a native Chinese, her in-depth understanding of the common grounds and differences between Chinese and western cultures from her studies in the U.S., and her journalistic experience. This unique combination of skills and knowledge sets her apart not only from an available U.S. citizen having the same qualification, but also from her Chinese peers.

When considering the extent to which the petitioner's skills and knowledge distinguish her from "minimally qualified" journalists, we note that the petitioner holds no degree in journalism. Her degrees are in music, music education, and computer science.

The majority of the evidence in the record consists of examples of the petitioner's work, in the form of copies of articles and transcripts of broadcast stories, as well as recordings of the petitioner's broadcast segments. This evidence indicates that the petitioner is a journalist, but it does not, on its face, distinguish the petitioner from other journalists.

Several letters accompany the petitioner's initial submission. [redacted] chief of VOA's Chinese Branch, states:

> [The petitioner] worked as a Contractor for VOA from October, 2002, through August, 2003, in various areas including program production, interviewing, writing, announcing and translating for air shows. She was beginning to assist in production of television programming when her one-year authorized period of practical training expired.
>
> [The petitioner's] work benefited the VOA Mandarin Service, and in turn the U.S. national interest, by contributing to the fulfillment of our congressionally mandated mission to represent the policies of the United States by communicating directly with the people of China.
>
> The VOA Mandarin Service has great difficulty finding suitable talent to produce its Chinese-language programs. . . . Very few candidates qualify for these positions and we have hired those that do qualify whenever possible. The Mandarin Service does not currently have any vacancies for full-time GG-9/11 or GS-9/11 International Broadcaster positions.

> [The petitioner's] education and work experience in China and the U.S. and for Chinese media in Singapore – in particular her combination of journalism and music backgrounds – make her highly desirable for the VOA Mandarin Service's programming needs.

Because the VOA Mandarin Service "does not currently have any vacancies," it appears that the petitioner intends to continue working for VOA as a contractor. (This contract work later resumed, some time after the witnesses wrote their letters.)

chief of VOA's Mandarin Service, states:

> By her quality work to produce truthful and timely news, [the petitioner] is communicating directly to the Chinese audience of VOA. The broad-based listenership demonstrates VOA's success in winning the hearts and minds of truth-seeking Chinese. . . .
>
> Her recent work includes extensive and in-depth coverage on the North Korea nuclear crisis. . . . [The petitioner] went all her way out to conduct either event interviews or telephone interviews with officials at the Cato Institute and the Center for Strategic & International Studies to write sourced, accurate and balanced reports. . . .
>
> When the outbreak of SARS hit China, because of the Chinese government's opaque coverage at the first place, a lot of Chinese people lost confidence in the official updates and turned to foreign media for the truth of SARS. . . . [T]he reports in Mandarin from VOA Chinese Branch became a reliable and critical source for millions of Chinese people who were anxious about their safety and eager for the truth. . . .[1]
>
> By producing accurate, objective and comprehensive news, [the petitioner] has proved herself as an exemplary international journalist. Her unique qualification is based on her familiarity with Chinese social, political and cultural nuances from being a native Chinese, her in-depth understanding of the common grounds and differences between Chinese and western cultures from her student career in the U.S., and her professionalism from years of journalistic experience and the pursuit of her journalistic interest. This unique combination of skills and knowledge sets her apart not only from any available U.S. citizens, but also from most of her Chinese peers.

[redacted] supervisor of VOA's Chinese Branch TV Team, states: "Besides radio broadcasting, [the petitioner] also joined our TV Service to produce the golden award TV program, Culture Odyssey, which . . . provides a snapshot of the American society and American culture in Mandarin to audiences in China and other Asian countries and areas." [redacted] states that the petitioner helps to familiarize Chinese audiences

[1] According to VOA's own web site, China has jammed VOA's Mandarin-language broadcasts continuously since 1989. Source: http://www.voa.gov/printerfr.cfm?tablename=tblVOAHistory&articleID=10008, visited March 22, 2006. Also according to VOA, "China has become the biggest practitioner of international radio jamming in the post-Cold War world." Source: http://www.voanews.com/english/2005-10-13-voa36.cfm, visited March 22, 2006. Therefore, it is unclear to what extent Mandarin speakers within China have been able to receive VOA's Mandarin Service broadcasts.

with American morals, culture, and politics by profiling films such as *The Incredible Hulk* and *Legally Blonde 2*.

The remaining letters discuss the petitioner's earlier journalistic work. [redacted] formerly an instructor at Towson University, selected the petitioner as his teaching assistant for "a large lecture Principles of Advertising class in the Department of Mass Communication and Communication Studies." Mr. [redacted] states that the petitioner's articles "have bestowed upon her very broad international appeal as an expert on American issues."

[redacted] of MediaCorp Radio Singapore states that the petitioner "has made significant contributions to the interest of America by reporting, analyzing and commenting on American breaking events, politics, technology, economy and society." [redacted], editor of *Lianhe Zaobao*, "the leading Chinese-language daily in Singapore and Southeast Asia," offers the similar assertion that the petitioner "has contributed about 100 insightful commentary articles . . . on political, economic, technology and social trends in the US. Her articles have helped our readers gain a great understanding of key issues in the United States." It is arguably a basic job duty for a journalist to provide readers with information and insight about topics of interest. Lim [redacted] asserts that the petitioner "has built up her reputation as an expert" on various American issues, but the record contains no evidence of this reputation. The witnesses of record are mostly current or former employers, plus a former instructor. There is no evidence that the wider journalism community has taken particular notice of the petitioner's work.

The director denied the petition, stating that the petitioner has not demonstrated that her work has had an impact beyond what would typically be expected given the nature of her employment. Much of counsel's appellate brief is copied verbatim from the statement submitted with the initial filing. Like the petitioner's prior submissions, additional examples of the petitioner's work, submitted on appeal, serve to show that the petitioner is a journalist, but this in itself is not a sufficient basis for a waiver.

The petitioner submits two new letters on appeal. Dr. [redacted] senior research fellow and chairman of the Institute of International Relations at National Chengchi University, came to know the petitioner because both individuals have written for *Lianhe Zaobao*. Dr. [redacted] states that the petitioner's articles for that newspaper, on the subject of the bitterly contested 2000 presidential election, provided "unique and comprehensive insight to Chinese readers around the world." Dr. [redacted] also asserts that the petitioner "became the sole and most authoritative commentator on [the American hi-tech industry] for the publication. Her commentaries have been widely quoted in Chinese IT newspapers, magazines and websites."

The petitioner has submitted a list of web sites said to have "cited" the petitioner's work. The petitioner has not submitted printouts from those sites. If any of the web sites listed by the petitioner cite to her work for VOA (which is the primary basis of her waiver claim), the petitioner does not identify which sites do so. Because the burden of proof is on the petitioner, rather than CIS, it is the petitioner's responsibility to provide any evidence deemed relevant, rather than simply provide instructions on where to find such evidence. We are under no obligation to visit each of the dozens of web sites listed, or to presume that it is rare for articles to be reproduced in this manner.

[redacted] managing editor of VOA's East Asia and Pacific Division, describes the petitioner's work before and after joining VOA, and states that the petitioner "played an essential role by independently producing the program segment *Hollywood Express*, which is a program previewing new Hollywood movies. Through this program, [the petitioner] effectively showcased an important American cultural institution." The petitioner has never persuasively articulated the reason why it is in the national interest for her, rather than another qualified Mandarin-speaking journalist, to be the one previewing movies for VOA. [redacted] observes that the petitioner "has presented Chinese audiences impressions of an open society and a positive image of America," the evident implication being that other journalists previewing the same films would present a negative image of America. Given that VOA is a government entity that exists to promote the interests of the United States, it would seem that presenting a positive image of America would be a basic condition for continued employment, rather than a rarely seen talent among VOA's reporters. Without some kind of independent confirmation that VOA reporters generally fail at their appointed task of presenting U.S. policies and viewpoints to their listeners, we can conclude little more than that the petitioner is a competent journalist.

All in all, the evidence and statements in the record show what the petitioner does, but fail to establish that the petitioner's accomplishments serve the national interest to a greater extent than those of other qualified and competent Mandarin-language journalists.

Beyond the decision of the director, review of the record reveals another issue of concern. Because we concur with the merits of the director's decision, this additional discussion shall not change the outcome of this appellate decision.

With regard to the immigrant classification that the petitioner seeks, the director offered a one-sentence finding: "In this case the beneficiary is the holder of an advanced degree." It appears, however, that further scrutiny is necessary in this matter. Holding an advanced degree does not necessarily qualify an alien as a member of the professions holding an advanced degree. Journalism appears to qualify as a profession, but the issue of the petitioner's degrees bears consideration.

The petitioner has earned three postsecondary degrees: a B.A. in Pedagogy of Music; an M.A. in Music; and an M.S. in Computer Science. Given that the petitioner specifically seeks classification as a member of the professions holding an advanced degree, we cannot ignore that the petitioner holds no degree – advanced or otherwise – that is directly relevant to her work in journalism.

Congress created two separate employment-based immigrant classifications for members of the professions, under sections 203(b)(2) and 203(b)(3)(ii) of the Act. A member of the professions holding an advanced degree may seek a national interest waiver, but a member of the professions lacking such a degree cannot do so. The only distinguishing factor between the two groups is the advanced degree. It is the AAO's position that, because the advanced degree allows the alien to apply for a special, additional benefit, the advanced degree should be relevant to the alien's intended field of employment. Otherwise, the classification would be open to aliens with no apparent training or expertise in a given profession. In such a scenario, the alien petitioner in this proceeding could, hypothetically, file other petitions as an architect, a molecular biologist, and a professor of medieval history, all on the strength of her master's degree in computer science. Such a result is patently absurd, and does not become less so simply because each of those occupations is a

profession and the petitioner holds an advanced degree. Eligibility to apply for the waiver is not simply a reward for continuing one's education; rather, such eligibility recognizes that an alien is better equipped to benefit the United States by virtue of the additional expertise gained through postgraduate study. In this instance, the record credits the petitioner with minimal coursework related to journalism.

Pursuant to 8 C.F.R. § 204.5(k)(2), five years of progressive post-baccalaureate experience in the specialty shall be considered to be equivalent to a master's degree. To corroborate this experience, 8 C.F.R. § 204.5(k)(3)(i)(B) requires the petitioner to submit "evidence in the form of letters from current or former employer(s)." Thus, from the plain wording of the regulation, the five years of experience must be employment experience. Because this experience serves in lieu of graduate-level education, it stands to reason that this experience must be more or less continuous. Otherwise, an alien could work only two days, spaced five years apart, and thereby claim five years of qualifying experience.

The petitioner earned her bachelor's degree in July 1993, and filed the petition in December 2003. The beneficiary of an immigrant visa petition must be eligible at the time of filing. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Therefore, the petitioner must show that she was employed as a journalist for at least five years between July 1993 and December 2003.

Form G-325A, Biographic Information, instructs aliens to list their employment over the last five years. The petitioner completed this form on October 16, 2003, in conjunction with a Form I-485 adjustment application filed concurrently with her Form I-140 petition. Form G-325A provides space for five different employers. The petitioner left the last line blank, and filled the other four lines with the following information:

Xiamen University	Lecturer	September 1996 – January 1999
Towson University	Teaching Assistant	September 2001 – July 2002
Voice of America	Journalist	October 2002 – August 2003
None		September 2003 – present

On this form, the petitioner claimed only ten months of employment experience relating to journalism between September 1996 and October 2003. The blank line on the form shows that the petitioner did not simply run out of space to list other journalistic experience.

The petitioner's passport, issued in 1997, lists her occupation as "Teacher." On her 2001 income tax form, the petitioner reported income from her teaching work at Towson University and identified her occupation as "Student." On her 2002 tax return, the petitioner reported $5,400 in business income as a "broadcaster." Tax documents relating to the beneficiary's 2002 VOA work are the only evidence in the record of the petitioner's paid experience as a journalist.

The record contains articles that the petitioner wrote between 1999 and 2002, but there is no evidence that the petitioner was paid for this work or reported such payments on her taxes. [redacted] of *Lianhe Zaobao* states that the petitioner "has been our newspaper's United States-based columnist since 1999." The record contains two separate lists of the petitioner's columns for that newspaper. On both lists, the earliest column was published April 15, 1999, which was less than five years before the December 4, 2003 filing date. Also, there is no

indication that the petitioner worked full time for *Lianhe Zaobao*; the record indicates only that the petitioner wrote one column per week, and even then, the chronological list of columns shows lengthy interruptions. For instance, the petitioner lists only ten columns published in 2002. Therefore, although roughly four years elapsed between the petitioner's first *Lianhe Zaobao* column and her last, we cannot reasonably conclude that this amounts to four years of experience.

As discussed above, the petitioner possesses no degree, advanced or otherwise, in the field of journalism. There is no evidence that the petitioner did any work as a journalist at all prior to April 1999, and she did very little such work during the first nine months of 2002. The regulations do not permit a finding that the petitioner possesses an advanced degree, or its equivalent, in journalism or any allied field. We therefore cannot concur with the director's apparent finding that the petitioner qualified, as of December 4, 2003, for classification as a member of the professions holding an advanced degree.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer, seeking an appropriate classification, and accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.